IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 6914 of 2006(W)

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PETITIONER:

G. JAYAPRAKASH, AGED 49 YEARS,
S/O. GOPINATHAN, VADAKKEPARAMBIL VEEDU,
CHURCH ROAD, THILLERI, KOLLAM-691 001.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.ABU MATHEW
SRI.ANIL KURIAN THOMAS
SRI.SOBHAN GEORGE

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT, HEALTH & FAMILY
WELFARE (G) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. KERALA STATE POLLUTION CONTROL
BOARD REPRESENTED BY ITS CHAIRMAN
PATTAM P.O., THIRUVANANTHAPURAM-695 004.

*3. ELECTION COMMISSION OF INDIA,
NIRVACHAN SADAN,
ASOKA ROAD, NEW DELHI - 110 001

BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,ELE.COMMN.
SRI.BABU JOSEPH KURUVATHAZHA,SC,POLU.C.
SRI.M.K.CHANDRA MOHANDAS,SC,POLL.C.BOARD
SENIOR GOVERNMENT PLEADER SRI.D.ANIL KUMAR.

* ADDITIONAL R3 IS IMPLEADED AS PER ORDER DATED 14.3.2006 IN I.A.3869/06.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF ORDER NO.G.O.(MS)106/2004/H&FWD DATED 19.5.2004 ISSUED BY 1ST RESPONDENT.

EXT.P2: COPY OF ORDER NO.G.O(MS) 51/2006/H&FWD DATED 1.3.2006 ISSUED BY 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:

EXT.R2(a): COPY OF THE AUTHORISATION DATED 4.4.2006 ISSUED BY THE BOARD.

EXT.R2(b): COPY OF THE ORDER NO.G.O.(MS) 308/2001/H&FWD DATED 4.12.2001 ISSUED BY THE GOVERNMENT.

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P.A. TO JUDGE.

**T.R.RAMACHANDRAN NAIR, J.**

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**W.P.(C).NO.6914 OF 2006**

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**Dated this the 28th day of March, 2007.**

**JUDGMENT**

The Writ Petitioner challenges Ext.P2 order passed by the first respondent, whereby the Government reconstituted the Kerala State Pollution Control Board. The petitioner contends that, as the petitioner was nominated for a period of three years, going by the provisions of the Water (Prevention and Control of Pollution) Act 1974, the action of the Government by way of reconstituting the Board, before the expiry of his term and also without resorting the provisions for removal under Section 5(3) are invalid in law.

2. The second respondent has filed a counter affidavit wherein the stand taken is that the petitioner was nominated by Ext.P1 in a casual vacancy. Previously, the Government has reconstituted the Board as per Ext.R2(b) order dated 4.12.2001, wherein 16 persons were nominated by the Government. The petitioner was nominated by Ext.P1 to fill the remaining vacancy and going by the provisions of the Act, he will get only the reminder of the term. The contention is that going by Section 5(6) of the Act in question, the action of the Government is perfectly justified.

3. I heard the counsel for the petitioner who took me to the provisions of the Act and also the decisions of this Court reported in *State of Kerala vs. V.P.P.Muhammed Kunhi* (1970 SLR 569) and that of Supreme

Court in *Hira devi and Others vs. District Board, Shahjahanpur* (AIR 1952 SC 362) and *State of Manipur and Others vs. Chandam Manihar Singh* (AIR 1999 SC 3730) to contend for the position that when the Act provides for specific provisions for nomination and for removal, the provisions of General Clauses Act will not apply and further that the characterisation of the vacancy if it all cannot be termed as a casual one to justify the removal of the petitioner.

4. Admittedly, the Government has reconstituted the Board as per Ext.P2. This court did not pass any Interim Order staying the nomination. As per the provisions of Section 4(2)(d), the Government can nominate three non-official members and going by the order Ext.P2, the Government has nominated three non-official members. The said members have not been impleaded as respondents in the Writ Petition. Therefore any order without them in the party array, will not be justified, as the decisions will affect the continuance in office of one of them. In view of the above circumstances, I close the Writ Petition without expressing anything on the merits of the contentions of the parties. No costs.

**T.R.RAMACHANDRAN NAIR**
**JUDGE**

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